

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3218 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANGANBHAI J PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BN PATEL for Petitioner
MR RC KODEKAR, AGP for Respondents No. 1 & 2
MR NV ANJARIA for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/09/2000

ORAL JUDGEMENT

By means of filing this petition under Article
226 of the Constitution, the petitioner has prayed to
issue an appropriate writ or order directing the

respondents to determine and fix the pension as well as other retirement benefits such as gratuity etc. payable to the petitioner forthwith. The petitioner has also prayed to direct the respondents to pay forthwith the amount of commuted part of pension, gratuity, arrears of instalments of monthly pension and such other retirement benefits together with interest at the rate of 18% per annum till the date of payment.

2. The petitioner was serving as Reader in Post Graduate Department of Commerce run and conducted by Sardar Patel University, Vallabh Vidyanagar, District : Kheda. The petitioner wanted to retire voluntarily. Hence, he addressed a letter dated October 15, 1986 to the Registrar of the University and requested him to permit him to retire voluntarily from service. A copy of the said letter is produced at Annexure-A to the petition. It may be stated that at the time when the above-referred to letter was addressed by the petitioner, he had completed the age of 51 years as well as service of 25 years and was entitled to retirement benefits such as pension, gratuity etc. The request made by the petitioner was accepted by the University vide its letter dated December 9, 1986, a copy of which is produced at Annexure-B to the petition. While in service the petitioner had opted for pensionary benefit as against contributory provident fund in view of Government Resolution dated October 15, 1984. Though the petitioner was entitled to pension, gratuity and other retirement benefits, the petitioner was not accorded the said benefits. On inquiry being made, the petitioner received a letter dated August 27, 1987 from the Registrar of the University, wherein it was stated that necessary papers for fixation of pension of the petitioner were already sent to Director for Higher Education, Gujarat State, Gandhinagar and were under his consideration. The petitioner, who had received the amount lying as deposit of contributory provident fund, was suggested to redeposit it with respondent no.1 so that benefits contemplated by Resolution dated October 15, 1984 can be made available to the petitioner. Accordingly, the petitioner had by Chalan dated November 17, 1987, deposited the amount of Rs. 12,059/- with respondent no.1. A xerox copy of chalan is produced by the petitioner at Annexure-E to the petition. However, the petitioner did not receive retiral benefits, though according to him, he had complied with the queries, which were raised by the Director for Higher Education, Gujarat State, Gandhinagar. Under the circumstances, the petitioner has filed the present petition and claimed the reliefs to which reference is made earlier.

3. When the matter was placed for admission hearing before the Court, following order was passed by R.A.Mehta,J. on February 14, 1989 :

"The third respondent-University is directed to furnish all necessary particulars and details of the petitioner's service to the Government to enable the Government to compute the retirement benefits of the petitioner. The University shall do so within two weeks from today. The Government shall, on receipt of the same, compute the retirement benefits payable to the petitioner within four weeks thereafter and place the same on record of this case. S.O. to 3.4.1989. D.S."

Thereafter the matter was adjourned from time to time and ultimately the matter was placed for further hearing on January 29, 1991 before the Court and following order was passed by N.J.Pandya,J. on that date :-

"Rule returnable on 6.3.91. By way of interim relief, taking into consideration computation carried out by respondents no.1 & 2 in response to the earlier order of this court passed on 14.2.1989 as prayed for in Para 9-B. The first two respondents are directed to pay directly to the petitioner the following sums:

Gratuity amount Rs. 50,000/-

Computed pension Rs. 68,400/-

The aforesaid two amounts shall be paid directly to the petitioner within a period of two weeks from today. As per the said computation, the monthly pension of the petitioner works out to Rs.1648.61 ps. for which necessary pension payment order or any other required order in that regard be passed addressed to the appropriate Treasury or Bank as the case may be and this amount shall be payable prospectively and the pension shall be payable on and from 1.3.1991.

In view of the aforesaid interim relief, rule is now restricted to the following two questions :-

- (1) The arrears that is to be paid along with any additional amount that the petitioner might be entitled to, if at all, there be any arrears in the aforesaid computation.
- (2) As to the interest amount, if any thing is to be paid and if that be so, at what rate ?

D.S.permitted."

4. Heard the learned counsel for the parties. Mr. J.A.Ramanuj, Deputy Director (Accounts), Commissionerate of Higher Education, S.Achivalaya, Gandhinagar has filed affidavit-in-reply dated September 1, 2000. Therein it is specifically mentioned that arrears of pension for the period from January 20, 1987 to November 1991 comes to Rs. 1,49,000/- and the amount of temporary increase comes to an amount of Rs.13,376/- and the total amount of Rs. 1,62,376/- has been paid to the petitioner on December 21, 1991. It is also stated in the said reply that an amount of Rs. 68,975/- being the gratuity amount due to the petitioner has also been paid to the petitioner on December 21, 1991. It is further mentioned in the said reply that in respect of commuted value of pension, an amount of Rs. 1,03,295.40 ps. was paid to the petitioner on December 13, 1991. The affidavit-in-reply filed by Mr. J.A.Ramanuj indicates that all the arrears due have been paid to the petitioner and, therefore, it is not necessary for the Court to give any direction to the respondents to pay any amount. The first question to which the rule is restricted, therefore, does not survive.

So far as award of interest at the rate of 18% per annum on the amount of retirement benefits is concerned, it is noticed that the Court has to consider as to which rate of interest the petitioner is entitled to on the amount of Rs. 1,62,376/- and Rs. 68,975/- paid to the petitioner towards pension and gratuity respectively on December 21, 1991 as well as on Rs. 1,03,295.40 ps. which was paid to the petitioner on December 13, 1991 in respect of commuted value of pension. It is an admitted position that the petitioner was entitled to above referred to sums from April 19, 1987 and, therefore, the petitioner would be entitled to reasonable rate of interest in view of catena of decisions of the Supreme Court on the point. Having regard to the facts of the case, I am of the view that interest of justice would be served if the respondents are directed to pay interest at the rate of 10% per annum (1) on the amount of Rs. 1,62,376/- and Rs. 68,975/- from April 19, 1987 to December 21, 1991 and (2) on the amount of Rs. 1,03,295.40 ps. from April 19, 1987 to December 13, 1991.

For the foregoing reasons, the petition partly succeeds. As the petitioner is already paid the amount of pension with temporary increase, amount of gratuity and amount of commuted value of pension, no direction is issued to the respondents to make payment of the same.

However, it is directed that the respondents shall pay interest at the rate of 10% per annum on the amount of Rs. 1,62,376/- and Rs. 68, 975/- from April 19, 1987 to December 21, 1991 and 10% interest on the amount of Rs. 1,03,295.40/- from April 19, 1987 to December 13, 1991. The respondents are directed to make payment of interest as early as possible and preferably within four weeks from today. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)

(patel)